(2) *Base year sample size.* The annual sample size in a State's first PERM cycle (the ''base year'') is—

(i) Five hundred fee-for-service claims and 250 managed care payments drawn from the claims universe; or

(ii) If the claims universe of fee-for-service claims or managed care capitation payments from which the annual sample is drawn is less than 10,000, the State may request to reduce its sample size by the finite population correction factor for the relevant PERM cycle.

(3) *Subsequent year sample size.* In PERM cycles following the base year:

(i) CMS considers the error rate from the State's previous PERM cycle to determine the State's annual sample size for the current PERM cycle.

(ii) The maximum sample size is 1,000 fee-for-service or managed care payments, respectively.

(iii) If a State measured in the FY 2007 or FY 2008 cycle elects to reject its State-specific CHIP PERM rate determined during those cycles, information from those cycles will not be used to calculate its annual sample size in subsequent PERM cycles and the State's annual sample size in its base year is 500 fee-for-service and 250 managed care payments.

[75 FR 48849, Aug. 11, 2010]

§ 431.974 Basic elements of Medicaid and CHIP eligibility reviews.

(a) *General requirements.* (1) States selected in any given year for Medicaid and CHIP improper payments measurement under the Improper Payments Information Act of 2002 must conduct reviews of a statistically valid random sample of beneficiary cases for such programs to determine if improper payments were made based on errors in the State agency's eligibility determinations.

(2) The agency and personnel responsible for the development, direction, implementation, and evaluation of the eligibility reviews and associated activities, including calculation of the error rates under this section, must be functionally and physically separate from the State agencies and personnel that are responsible for Medicaid and CHIP policy and operations, including eligibility determinations.

(3) Any individual performing activities under this section must do so in a manner that is consistent with the provisions of § 435.901, concerning the rights of recipients.

(b) *Sampling requirements.* The State must have in effect a CMS-approved sampling plan for the review year in accordance with the requirements specified in § 431.978.

(c) *Review requirements.* The State must conduct eligibility reviews in accordance with the requirements specified in § 431.980.

§ 431.978 Eligibility sampling plan and procedures.

(a) *Plan approval.* For each review year, the agency must—

(1) Submit its Medicaid or CHIP sampling plan (or revisions to a current plan) for both active and negative cases to CMS for approval by the August 1 before the review year; and

(2) Have its sampling plan approved by CMS before the plan is implemented.

(b) *Maintain current plan.* The agency must do both of the following:

(1) Keep its plan current, for example, by making adjustments to the plan when necessary due to fluctuations in the universe.

(2) Review its plan each review year. If it is determined that the approved plan is—

(i) Unchanged from the previous review year, the agency must notify CMS that it is using the plan from the previous review year; or

(ii) Changed from the previous review year, the agency must submit a revised plan for CMS approval.

(c) *Sample size.*

(1) *Precision and confidence levels.* Annual sample size for eligibility reviews should be estimated to achieve within a 3 percent precision level at 95 percent confidence interval for the eligibility component of the program.

(2) *Base year sample size.* Annual sample size for each State's base year of PERM is—

(i) Five hundred four active cases and 204 negative cases drawn from the active and negative universes; or

(ii) If the active case universe or negative case universe of Medicaid or

CHIP beneficiaries from which the annual sample is drawn is less than 10,000, the State may request to reduce its sample size by the finite population correction factor for the relevant PERM cycle.

(3) *Subsequent year sample size.* In PERM cycles following the base year the annual sample size may increase or decrease based on the State's prior results of the previous cycle PERM error rate information. The State may provide information to CMS in the eligibility sampling plan due to CMS by the August 1 prior to the start of the review year to support the calculation of a reduced annual sample size for the next PERM cycle.

(i) CMS considers the error rate from the State's previous PERM cycle to determine the State's annual sample size for the current PERM cycle.

(ii) The maximum sample size is 1,000 for the active cases and negative cases, respectively.

(iii) If the active case universe or negative case universe of Medicaid or CHIP beneficiaries from which the annual sample is drawn is less than 10,000, the State may request to reduce its sample size by the finite population correction factor for the relevant PERM cycle.

(iv) If a State measured in the FY 2007 or FY 2008 cycle elects to reject its PERM CHIP rate as determined during those cycles, information from those cycles is not used to calculate the State's sample size in subsequent PERM cycles and the State's sample size in its base year is 504 active cases and 204 negative cases.

(d) *Sample selection.* The sample must be stratified in accordance with § 431.978(d)(3). Cases must be selected each month throughout the fiscal year under review. Each month throughout the year and before commencing the eligibility reviews, States must submit to CMS a monthly sample selection list that identifies the cases selected in that month.

(1) *Eligibility universe-active cases—*(i) *Medicaid.* (A) The Medicaid active universe consists of all active Medicaid cases funded through Title XIX for the sample month.

(B) The following types of cases are excluded from the Medicaid active universe:

(*1*) Cases for which the Social Security Administration, under section 1634 of the Act agreement with a State, determines Medicaid eligibility for Supplemental Security Income recipients.

(*2*) All foster care and adoption assistance cases under Title IV–E of the Act are excluded from the universe in all States.

(*3*) Cases under active fraud investigation.

(*4*) Cases in which eligibility was determined under section 1902(e)(13) of the Act for States' Express Lane Eligibility option.

(C) If the State cannot identify cases that meet the exclusion criteria specified in paragraph (d)(1)(i)(B) of this section before sample selection, the State must drop these cases from review if they are selected in the sample and are later determined to meet the exclusion criteria specified in paragraph (d)(1)(i)(B) of this section.

(ii) *CHIP.* (A) The CHIP active universe consists of all active case CHIP and Title XXI Medicaid expansion cases that are funded through Title XXI for the sample month.

(B) The following types of cases are excluded from the CHIP active universe:

(*1*) Cases under active fraud investigation.

(*2*) Cases in which eligibility was determined under section 2107(e)(1) of the Act for States' Express Lane Eligibility option.

(C) If the State cannot identify cases that meet the exclusion criteria specified in paragraph (d)(1)(ii)(B) of this section before sample selection, the State must drop these cases from review if it is later determined that the cases meet the exclusion criteria specified in paragraph (d)(1)(ii)(B) of this section.

(2) *Eligibility universe—negative cases.* The Medicaid and CHIP negative universe consists of all negative cases for the sample month. The negative case universe is not stratified.

(3) *Stratifying the universe.* States have the option to stratify the active case universe.

(i) Each month, the State may stratify the Medicaid and CHIP active case universe into three strata:

(A) Program applications completed by the beneficiaries in which the State took action in the sample month to approve such beneficiaries for Medicaid or CHIP based on the eligibility determination.

(B) Redeterminations of eligibility in which the State took action in the sample month to approve the beneficiaries for Medicaid or CHIP based on information obtained through a completed redetermination.

(C) All other cases.

(ii) States that do not stratify the universe will sample from the entire active case universe each month.

(4) *Sample selection.* Each month, an equal number of cases are selected for review from one of the following:

(i) Each stratum as described in paragraph (d)(3)(i) of this section.

(ii) The entire active case universe if opting not to stratify cases under paragraph (d)(2)(ii) of this section.

(iii) Otherwise provided for in the State's sampling plan approved by CMS.

[71 FR 51081, Aug. 28, 2006, as amended at 72 FR 50513, Aug. 31, 2007; 75 FR 48849, Aug. 11, 2010]

§ 431.980 Eligibility review procedures.

(a) *Active case reviews.* The agency must verify eligibility for all selected active cases for Medicaid and CHIP for the review month for compliance with the State's eligibility criteria.

(b) *Negative case reviews.* The agency must review all selected negative cases for Medicaid and CHIP for the review month to determine whether the cases were properly denied or terminated.

(c) *Payment review.* The agency must identify all Medicaid and CHIP payments made for services furnished, either in the first 30 days of eligibility or in the review month for applications under § 431.978(d)(3)(i) and redeterminations under § 431.978(d)(3)(ii) in accordance to State policy or from the sample month for all other cases under § 431.978(d)(3)(iii), to identify erroneous payments resulting from ineligibility for services or for the program.

(d) *Eligibility review decision*—(1) *Active cases—Medicaid.* Unless the State

has selected to substitute MEQC data for PERM data under paragraph (f) of this section, the agency must complete all of the following:

(i) Review the cases specified at §§ 431.978(d)(3)(i)(A) and 431.978(d)(3)(i)(B) of this subpart in accordance with the State's categorical and financial eligibility criteria and documented policies and procedures as of the review month and identify payments made on behalf of such beneficiary or family for services received in the first 30 days of eligibility.

(ii) For cases specified in § 431.978(d)(3)(i)(C) of this subpart, review the last action as follows:

(A) If the last action was not more than 12 months prior to the sample month, review in accordance with the State's categorical and financial eligibility criteria and documented policies and procedures as of the last action and identify payments made on behalf of such beneficiary or family in the first 30 days of eligibility.

(B) If the last action occurred more than 12 months prior to the sample month, review in accordance with the State's categorical and financial eligibility criteria and documented policies and procedures as of the sample month and identify payments made on behalf of the beneficiary or family for services received in the sample month.

(iii) For cases in States that do not stratify the universe, as specified in § 431.978(d)(3)(ii) of this subpart, review the last action as follows:

(A) If the last action was no more than 12 months prior to the sample month, review in accordance with the State's categorical and financial eligibility criteria and documented policies and procedures as of the last action and identify payments made on behalf of such beneficiary or family for services received in the sample month.

(B) If the last action occurred more than 12 months prior to the sample month, review in accordance with the State's categorical and financial eligibility criteria, and documented policies and procedures, as of the sample month and identify payments made on behalf of the beneficiary or family for services received in the sample month.

(C) Cases that are not stratified must have the last action identified as either